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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

In re:

**GIL DIAZ PIMENTEL,
BENJAMINA D. PIMENTEL**

Debtor

Chapter 13

Case No. 10-40078-RN-13

**MOTION TO VALUE SECURITY,
DETERMINE STATUS OF CLAIM AND
DECLARE VOID LIEN**

Pursuant to 11 U.S.C. Section 506(a) and Fed. R. Bankr. P. 3012, debtors, by their attorney, M. Colby freeman, hereby move the Court for an Order valuing the below described security, determining the status of the below referenced creditor's claims and declaring void the lien of creditor upon chapter 13 discharge .

FACTS

The collateral sought to be valued in this motion is the debtors' family home commonly known as 15058 Edgemoor St. San Leandro, Alameda County, California 94579, more particularly described as:

Lot 23, Block 3, Tract 906, Filed November 17, 1949, Map Book 30, Page 36. Alameda County Records. Also known as 15058 Edgemoor Street, San Leandro, California 94579.

APN:080H-1500-029

1 The creditor whose lien validity and claim status is to be determined by this motion is:

2 **Bank of America Home Loans**
3 **P.O. Box 10287**
4 **Van Nuys, CA 91410-0287**

5 **DEBTOR(S) VALUATION AND BASIS:** \$389,000.00 as stated on Schedule A of the
6 bankruptcy petition and chapter 13 plan. This value is based on a survey of the immediate area
7 surrounding that property, and a look at recent comparable sales.
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9 The subject property is encumbered as follows: a 1st deed of trust in favor of GMAC
10 Mortgage, LLC in the amount of \$597,796.27, and a 2nd deed of trust recorded with the
11 Records office of Alameda County as **Instrument #'s 2006368592 and 2006368593** in favor
12 of Greenpoint Mortgage and its successor in interest, Bank of America Home Loans, in the
13 amount of \$67,887.30.

14 **POINTS AND AUTHORITIES**

15 . 11 U.S.C. 506(a)(1) provides that a creditor has an allowed secured claim to the extent
16 it's of the creditor's interest is the estate property, and an unsecured claim to the extent it's claim
17 exceeds the value. 11 U.S.C. Section 506(d) provides that the to the extent that a lien secures a
18 claim against the debtor that is not an allowed secured claim, such lien is void.

19 11 U.S.C. section 1322(b)(2) provides that a plan may modify the rights of holders of
20 secured claims, other than a claim secured only by a security interest in real property that is the
21 debtor's principal residence. . . . However where a creditor's claim, which is seemingly secured
22 only by an interest in the debtor's primary residence, is determined to be entirely unsecured
23 pursuant to 11 U.S.C. section 506, the lien is void. See In re Zimmer, 313 F.3d 1220 (9th Cir.
24 2002).

25 **WHEREFORE**, debtors pray for the following relief:

26 1. That the collateral is valued at \$389,000.00.
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28

- 1 2. That any claim of Bank of America Home Loans, 2nd deed of trust recorded with the
2 Recorders office of Alameda County as **Instrument #'s 2006368592 and 2006368593** in
3 favor of Greenpoint Mortgage and its successor in interest, Bank of America Home
4 Loans, be valued pursuant to 11 U.S.C. section 506(a) and thereby determined to be
5 entirely unsecured, and
- 6 3. That upon discharge under 11 U.S.C. section 1328(a), the 2nd deed of trust recorded with
7 the Recorders office of Alameda County as **Instrument #'s 2006368592 and**
8 **2006368593** in favor of Greenpoint Mortgage and its successor in interest, Bank of
9 America Home Loans, in the amount of \$67,887.30, securing creditor's claim be declared
10 void, and that debtor may record this order with the county recorder as proof that the
11 deed of trust of creditors is void.

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13 Dated: March 23, 2010

14 /S/M. Colby Freeman
15 M. COLBY FREEMAN
16 Attorney for Debtor(s)
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